



# MAYOR AND COUNCIL AGENDA

NO. 7A

DEPT.: Recreation and Parks

DATE: January 3, 2005

**ACTION:** AWARD OF CONTRACT  
**TO:** HBF, INC. - Hootie and the Blowfish  
**OF:** Los Angeles, CA 90069  
**AMOUNT:** \$100,000  
**FOR:** Headline Entertainment at Hometown  
Holidays - May 28, 2005

**ACTION STATUS:**  
**FOR THE MEETING OF:** 1/10/05  
INTRODUCED  
PUB. HEARING  
INSTRUCTIONS  
APPROVED  
EFFECTIVE  
**ROCKVILLE CITY CODE,**  
CHAPTER  
SECTION  
☒ **CONSENT AGENDA**

**RECOMMENDATION:** Staff recommends award of contract to Hootie and the Blowfish of Los Angeles, CA in the amount of \$100,000 for a 90-minute performance at Hometown Holidays on Saturday, May 28, 2005.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Fiscal: FY05 Recreation and Parks, Special Events Division Budget 110-900-0150-0208

## BACKGROUND:

Bid Distribution: No. of bids distributed: N/A No. of Rockville businesses: N/A

Bids received: N/A

Current Vendor/ Contractor Costs: N/A

Project Description: **Hootie and the Blowfish** was formed at the University of South Carolina and features guitarist Mark Bryan, bassist Dean Felber, (both born and raised in Montgomery County) vocalist Daruis Rucker and drummer Jim Sonefeld.

**Cracked Rear View**, the group's first album, was released in the fall of 1994 and was propelled to number one by the hit songs, "Hold My Hand", "Let Her Cry", and "Only Wanna Be With You". The band won the 1995 Best New Artist Grammy. This homecoming concert for the band should draw a large audience to Rockville Town Center. The opening act will be local favorite **Rhumba Club**.

Hometown Holiday Headline Entertainment Expenditures\*:

2005: Hootie and the Blowfish	\$100,000
Rhumba Club	<u>\$2,000</u>
	<b>\$102,000 Total</b>

2004: LIVE	\$80,000
Gin Blossoms	<u>\$25,000</u>
	<b>\$105,000 Total</b>

2003: Jefferson Starship	\$17,500
Spin Doctors	\$20,000
Spinners	\$20,000
Laser Show	\$29,500
Maximum Velocity Stunt Show	<u>\$10,000</u>
	<b>\$97,000 Total</b>

2002: REO Speedwagon	\$50,000
Duke Ellington Orchestra	\$15,000
Laser Show	\$29,500
Xtreme Air Stunt Show	<u>\$10,000</u>
	<b>\$104,500 Total</b>

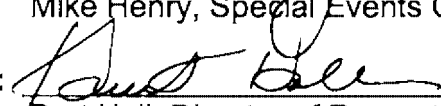
\*This chart compares expenditures for headline entertainment over the past four Hometown Holidays events. Other expenditures for entertainment include fireworks, street entertainers ("buskers"), local musicians/bands during daytime hours to compliment the art show, as well as staging, lighting, sound, giant tv monitor, etc. Expenditure levels for these entertainment items will be closely comparable to previous years.

**PREPARED BY:**

  
Mike Henry, Special Events Coordinator

Date 1/3/05

**APPROVE:**

  
Burt Hall, Director of Recreation and Parks

Date 1/3/05

  
Eileen Morris, Contracts Officer

Date 1/4/05

  
Scott Ullery, City Manager

Date 1/3/05



# MAYOR AND COUNCIL AGENDA

NO. 7(B)

DEPT.: Recreation and Parks

DATE: January 3, 2005

**ACTION:** Award of Bid 23-05  
**TO:** H&H Landscaping  
**OF:** Clarksville, Maryland  
**AMOUNT:** \$151,180.26  
**FOR:** Municipal Grass Mowing

**ACTION STATUS:**  
**FOR THE MEETING OF:** 1/10/05  
 INTRODUCED  
 PUB. HEARING  
 INSTRUCTIONS  
 APPROVED  
 EFFECTIVE  
**ROCKVILLE CITY CODE,**  
 CHAPTER  
 SECTION  
☒ **CONSENT AGENDA**

**RECOMMENDATION:** Staff recommends the award of Bid 12-05 for municipal grass mowing to H&H Landscaping of Clarksville, Maryland in the amount of \$151,180.26 for the base year with the option(s) of extending the contract terms and conditions for four additional one-year periods, with the approval of the City Manager and subject to approval of funds.

**IMPACT:** ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:

Fiscal: Sufficient funds are available in Accounts 110-900-7522-0321, 110-900-7531-0231, 340-900-3401-0231 and 330-850-3301-0231.

Neighborhood: Grass mowing maintenance will have a positive impact on the citizens and their neighborhood.

**BACKGROUND:** Invitations for Bid were mailed to 48 firms, seven of which were Rockville firms. Sealed bids were received and opened on November 24, 2004 at 2:00 p.m. in the Mayor and Council Chamber. Two bids were received, as follows:

Contractor	Location	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. H & H Landscaping	Clarksville MD	\$151,180.26	\$157,430.98	\$159,684.48	\$161,719.38	\$162,039.38	\$792,054.48
2. Lancaster Landscapes, Inc.	Fairfax VA	\$173,238.68	\$178,633.92	\$ 184,029.16	\$189,424.40	\$ 196,548.88	\$921,875.04

**Project Description:** To furnish all labor, equipment, materials and tools necessary to provide complete and satisfactory lawn mowing services at a consistently superior level at various parks, facilities, stormwater management areas, City rights-of-way and State rights-of-way throughout the City of Rockville. This contract provides for 212.42 acres of grass-mowing services for the City and supplements lawn maintenance by in-house labor.

**Budget Estimate:** The original estimate was \$1,000,000.00. The previous five-year contract cost was \$786,151.80.

**References:** H & H Landscaping performed satisfactory work for the City of Rockville in the years 1997, 1998 and 1999 under the Municipal Lawn Mowing Contract 65-97. In addition, they provided satisfactory service to the Montgomery County Department of Public Works and Transportation in 2004.

**PREPARED BY:**

Steven E. Mader  
Steven E. Mader, Superintendent of Parks and Facilities

1/3/05  
Date

**APPROVE:**

Burt Hall  
Burt Hall, Director of Recreation and Parks

1/3/05  
Date

Eileen Morris  
Eileen Morris, Contracts Officer

1/4/05  
Date

Scott Ullery  
Scott Ullery, City Manager

1/3/05  
Date

**LIST OF ATTACHMENTS:** None



# MAYOR AND COUNCIL AGENDA

NO. 7(4)

DEPT.: Public Works / Water Treatment Plant

DATE: December 30, 2004

**ACTION:** Rejection of Bid No. 24-05

**FOR:** Furnishing and installing an emergency generator at the Water Treatment Plant.

**ACTION STATUS:**

**FOR THE MEETING OF:** 1/10/05

INTRODUCED  
PUB. HEARING  
INSTRUCTIONS  
APPROVED  
EFFECTIVE

**ROCKVILLE CITY CODE,**

CHAPTER  
SECTION

☒ **CONSENT AGENDA**

**RECOMMENDATION:**

Staff recommends the Mayor and Council reject all bids received for Bid No. 24-05 for furnishing and installing an emergency generator at the Water Treatment Plant.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding for this project is from CIP account number 210-850-4B34-0426 in the amount of \$300,000.

**BACKGROUND:**

Bid Distribution:

Notification of the bid was mailed to 47 prospective contractors. Three Rockville firms provide these services. Bid notification also was posted on the City's Web site. Four bids were received; however, the bid from Alban Engine Power Systems in Elkridge, MD in the amount of \$343,614 did not meet the bid specifications for installation.

Bids Received:

<u>Firm</u>	<u>Location</u>	<u>Bid</u>
Cynergy Electric Company Inc	Millersville, MD	\$436,713
Ellsworth Electric Inc	Hagerstown, MD	\$468,500
Herring Electric Company Inc	Dulles, VA	\$526,000

The City estimate was \$300,000.

Notes on Bid:

The bids received for this project significantly exceed available funding. In discussions with prospective vendors, staff has concluded that both the limited response and the bid prices were affected by the inability (due to their work loads) of bidders. The lowest bid exceeded the project estimate by \$136,713. Staff is currently seeking alternatives, including a used generator system.

Project Description:

This project is to furnish and install an emergency generator system capable of running the Water Treatment Plant at the average demand level for periods when commercial power is interrupted.

Funding:

Funding for this project is from CIP account number 210-850-4B34-0426 in the amount of \$300,000.

Recommendations:

Staff recommends the Mayor and Council reject all bids received for Bid No. 24-05.

PREPARED BY: William Sizemore 12/30/2004

William Sizemore, Water Treatment Plant Supt. Date

CONCUR: Eileen Morris 1/5/05  
Eileen Morris, Contracts Officer Date

APPROVE: Eugene H. Cranor 1/5/05  
Eugene H. Cranor, Director of Public Works Date

APPROVE: Scott Ullery 01/05/05  
Scott Ullery, City Manager Date

**LIST OF ATTACHMENTS:**

None



# MAYOR AND COUNCIL AGENDA

NO. 7(D)

DEPT.: Recreation and Parks /

DATE: January 3, 2005

**ACTION:** Modification to Purchase Order #26444

TO: Tetra Tech, Inc.

OF: Christiana, DE.

AMOUNT: \$31,320.40

FOR: Additional Design, Engineering Services and Related Work Necessary for the Preparation of the Construction Plans and Specifications Portion of the Bid Package for the Development of the King Farm 28-Acre Park.

**ACTION STATUS:**

**FOR THE MEETING OF:** 1/10/05

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

**ROCKVILLE CITY CODE,**

CHAPTER

SECTION

☒ **CONSENT AGENDA**

**RECOMMENDATION:** Staff recommends approval of a modification to PO #26444, in the amount of \$31,320.40, to Tetra Tech, Inc. of Christiana, DE, for additional design and engineering services related to the preparation of plans and specifications for the bid package being prepared for the King Farm 28 Acre Park project.

**IMPACT:** ☐ Environmental ☒ Fiscal ☒ Neighborhood ☒ Other:

Fiscal: Sufficient funding is available in FY 2005 CIP, account #420-900-3A60. Program Open Space funding assistance will be applied toward this project.

Neighborhood: The park will provide the recreational amenities typical of a Rockville neighborhood park, such as playground equipment, picnic area, tennis and basketball courts, fitness cluster, playfields, walks and passive open landscaped areas.

Other: A dog park is planned for the eastern section of the site, which borders the adjacent commercial property (King Pontiac). Two football fields will be located in the northern section of the park to serve as the home facility for the Rockville Football League.

**BACKGROUND:**

On April 28, 2003, Mayor and Council awarded a contract to Tetra Tech, Inc. of Christiana, DE. for Landscape Architectural & Engineering Services for the Design and Construction Administration of the King Farm 28 Acre Site. [Request for Proposal 49-03] in the amount of \$93,966.

**DESCRIPTION:**

Approval is requested to modify the contract and increase Purchase Order #26444 in the amount of \$31,320.40, for a revised Purchase Order total of \$125,286.40. Purchase Order #26444 covered A/E services for the overall park *concept design*, plus *detailed design and construction documents* for Phase 1 of park construction. The need for additional design services at this point in the project has been created because it has become necessary to complete more detailed design work for the total park site in order to address all of the design decisions necessary to generate the construction documents for Phase 1. Essentially, the City will be paying for necessary design work earlier in the overall project schedule, which calls for construction of the park in four phases. The total design costs will, in the end, be in the 8% (of construction cost) range, which is appropriate for this type of project.

Additional work required: prepare topographic and base map data for the entire park site (total park grading plan); analyze and add utility easements, some of which have changed due to property swaps; address total site requirements for Sediment Control/Storm Water Management; prepare the Forest Conservation Plan. All of this work is necessary to obtain Building Permit Approval.

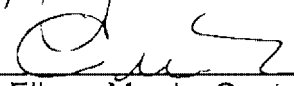
**PREPARED BY:**

  
Gerald R. Daus, Parks and Facilities Development Manager

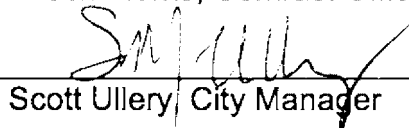
**APPROVE:**

  
Burt Hall, Director of Recreation and Parks

1.3.05  
Date

  
Eileen Morris, Contract Officer

1/4/05  
Date

  
Scott Ullery, City Manager

01/05/05  
Date

**LIST OF ATTACHMENTS:**





# MAYOR AND COUNCIL AGENDA

NO. 7(E)

DEPT.: Finance /

DATE: January 4, 2005

**ACTION:** Approval of amendment to the City's Pension Plan to adjust the calculation for purchasing prior government service

**ACTION STATUS:**

**FOR THE MEETING OF:** 1/10/05

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

**ROCKVILLE CITY CODE,**

CHAPTER

SECTION

☒ **CONSENT AGENDA**

**RECOMMENDATION:** That the Mayor and Council approve the amendment to the Pension Plan recommended by the Retirement Board and described in the Background section.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

The proposed change to the calculation for purchasing prior government service will not have a significant fiscal impact on the Pension Plan.

**BACKGROUND:**

Pension plan participants are given the opportunity to purchase up to 36 months of prior government service with another federal, state, county or municipality. The election to purchase this service generally must occur within one year of employment with the City (about 25 employees took advantage of a buyback "window" last year during which any employee could buyback service). The cost to the employee of the purchase of additional months is based on a calculation that multiplies the employees current wages X the number of months to be purchased X a percentage factor specified in the Plan. For example, the current percentage factor for Union employees is .483%. A new employee making \$40,000 per year could purchase 36 months of prior service for \$6,955 (.00483 X 36 X 40,000). The required amount can be paid in a lump sum or through payroll deduction for a period of one, three or five years. The percentage factors in the calculation are based on the present value of the additional benefit to the employee of purchasing this service. The factors vary for each of the City's retirement options (union, administrative or FOP) because the formula for calculating retirement benefits differs for each of the options.

Principal Financial Group was asked to review all of the percentage factors used in the plan for this calculation and to recommend any changes. The assumptions behind the current factors, which have been in place since 1989, are no longer available and changes have been made to some of the

Plan options since the factors were developed. At their meeting on November 10, 2004 the Retirement Board reviewed the information provided by Principal. The assumptions used by Principal were as follows:

- Age at purchase – 35
- Age at retirement – 60
- Salary increases – 5% per year
- Investment return for Plan assets – 7.5%
- Mortality – 1994 GAR tables

A comparison of the percentage factors currently in the Plan and the new factors calculated by Principal is as follows for the three options available to new City employees:

	Current Factors	Calculated Factors
Union Thrift Option	.483%	.492%
Admin Thrift Option	.593%	.590%
Police Option	1.167%	1.107%

(New percentage factors were also provided for the Union DB Option and the Admin DB Option; these benefit plans are closed to new employees but the changes were incorporated into the attached amendment nevertheless in case the need arises to use these factors.)


The largest variance is for the police option and would reduce the cost to an employee to purchase 36 months of prior service by approximately \$860, from \$16,804 to \$15,940, assuming a \$40,000 salary. Since generally only a small number of new employees are interested in the purchase of prior service, the impact on the Plan itself would be negligible.

The Retirement Board recommended that the Mayor and Council amend the Plan to incorporate the revised factors, since the assumptions used to calculate the new factors have been clearly identified and the factors reflect the current benefit plan.

PREPARED BY:

  
Dominic Del Pozzo, Acting Director of Finance

APPROVE:

  
Scott Ullery, City Manager

01/05/05  
Date

#### LIST OF ATTACHMENTS:

Fourth Amendment to the City of Rockville Pension Plan  
Letter from Michael Dulaney, Principal Financial Group

## **FOURTH AMENDMENT TO THE CITY OF ROCKVILLE PENSION PLAN**

Pursuant to the powers of amendment reserved in Section 13.1 of the City of Rockville Pension Plan, as amended and restated effective as of November 13, 2000, and as subsequently amended, said Plan shall be and the same hereby is amended by the City of Rockville ("City"), effective as of February 1, 2005, as follows:

### **FIRST AND ONLY CHANGE**

Section 4.6(c) shall be deleted in its entirety and the following substituted in lieu thereof:

"(c) Each Employee shall have the right to purchase Credited Future Service, up to a maximum of 36 months, for any previous service with a Federal, State, County or Municipal agency, except as otherwise provided by Section 4.7 of the Plan. In order to receive credit under this Section, an Employee must formally elect, in writing, to purchase the Credited Future Service within a year of notification of right to purchase Credited Future Service by the Personnel Department of the City. Such an election, once made is irrevocable.

An Employee covered under the Defined Benefit Option and electing to purchase Credited Future Service must agree to pay to the Plan a percentage of his/her Earnings as of the date of notification of right to purchase Credited Future Service for each month of Credited Future Service which is purchased. The percentage is 0.885% for Union Employees, 0.984% for Administrative Personnel, and 1.107% for Police Employees.

An Employee covered under the **Administrative** Thrift Plan Option and electing to purchase Credited Future Service must agree to pay the Plan 0.590% of his/her Earnings as of the date of notification of right to purchase Credited Future Service for each month of Credited Future Service which is purchased.

An Employee covered under the **UNION** Thrift Plan Option and electing to purchase Credited Future Service must agree to pay to the Plan 0.492% of his/her Earnings as of the date of notification of right to purchase Credited Future Service for each month of Credited Future Service which is purchased.

Notwithstanding the foregoing, any person who is an Employee on February 1, 2005 may elect to use, with respect to the purchase of Credited Future Service under this Section 4.6(c), such applicable percentages of Earnings as were set forth in the above three paragraphs on January 31, 2005.

An Employee shall pay for the purchased Credited Future Service by paying a lump-sum amount at any time within a year of notification of right to purchase the Credited Future Service or through biweekly payroll deduction commencing

within a year of notification of right to purchase the Credited Service of over a period of one, three or five years as elected by the Employee. Commencing with the 27th payment, interest shall be charged to the unpaid balance at the end of each pay period at an effective annual rate of 6%.

The amount of each biweekly contribution shall be determined by multiplying the total amount due by a percentage as follows:

<u>Years</u>	<u>Number of Biweekly Payments</u>	<u>Each Biweekly Payment is this Percentage of the Total Amount Due</u>
1	26	3.846%
3	78	1.331%
5	130	0.841%

An Employee who terminates employment and receives a refund of his/her contributions plus Credited Interest shall not be entitled to receive any Credited Service or City contribution under Section 9.3 or Credited Service under Section 16.5 attributable to the purchased Credited Service.”

The City of Rockville Pension Plan, as amended and restated effective as of November 3, 2000, as subsequently amended, and as amended by the foregoing changes, is hereby ratified and confirmed in all respects.

**IN WITNESS THEREOF**, the City has caused this Third Amendment to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**ATTEST:**

**CITY OF ROCKVILLE**

\_\_\_\_\_ By: \_\_\_\_\_

September 14, 2004

Mr. Timothy Peifer  
Financial Systems Manager  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850-2364

Re City of Rockville Pension Plan  
Cost of Employee Service Purchases

Dear Mr. Peifer

As requested, I have researched the cost charged to participants to purchase up to 36 months of service with another Federal, State, County or Municipal Agency (as provided for in Section 4.6(c) of your plan).

#### **Current Factors**

Participants have a one year period to make an irrevocable election to purchase Credited Future Service. They must pay the following amounts to purchase that service:

	<u>% of Earnings at Date of Notification</u> <u>(per month of service purchased)</u>
Union DB Option	0.875%
Union Thrift Option	0.483%
Admin DB Option	1.006%
Admin Thrift Option	0.593%
Police	1.167%

#### **Sufficiency of Factors**

The purchase factors are based on the estimated present value of the additional benefits from the purchased service. The factors influencing this are:

1. *The formula being purchased* (Union DB, Union Thrift, Admin DB, etc.)
2. *Pay increases between time of purchase and actual retirement.* The contribution made by a participant is based on their earnings at date of notification while the increase in benefits will be based on their final average earnings at retirement.
3. *Age at retirement.* A police employee who can retire much earlier than age 60 and receive an unreduced benefit receives a larger additional benefit.
4. *Age at Purchase.* How long will the plan be able to have investment earnings on the contribution made by the participant? If everything else is equal, it should cost more for an age 50 employee to purchase service than an age 25 employee.
5. *Investment Return by Plan.* How much investment return does the plan receive on the contribution made by the participant?

6. *Mortality*. How many monthly payments will the participant receive after they retire?

If the exact future of every participant was known (when they will retire, how long they will live, what rate of return the plan will earn each year, etc.), purchase figures could be calculated that would be exactly sufficient for every participant. Unfortunately, these factors would also be different for every participant.

It is more administratively practical to set reasonably simple factors to administer and communicate. This requires making some fixed assumptions for factors #2 through #6 listed above and realizing that some participants will gain or lose based on their situation (with the plan picking up the difference in cost or realizing the gain). This has been done to develop your current factors.

#### **Purchase Factors**

The assumptions used to calculate your current factors were unavailable. However, I have backed into assumptions which produce values very close to your current factors.

	<u>Formula</u> <u>Purchased</u>	<u>Current Factor</u> <u>In Document</u>	<u>Calculated</u> <u>Factor</u>
Union DB Option	1.80%	0.875%	0.885%
Union Thrift Option	1.00%	0.483%	0.492%
Admin DB Option	2.00%	1.006%	0.984%
Admin Thrift Option	1.20%	0.593%	0.590%
Police	2.25%	1.167%	1.107%

#### Assumptions

Age at Purchase: 35  
Age at Retirement: 60  
Salary Increases: 5.00%  
Investment Return: 7.50%  
Mortality: 1994 GAR

This means for the specific individual outlined in the assumptions (age 35, retires at 60, etc.), your current factors are quite reasonable.

#### **Sensitivity to Assumptions**

Exhibit I attached shows the factors using different assumptions. I have also expanded to show the factors by age at purchase rather than just using age 35. Comparing these to the factors above illustrates the cost (or gain) to the plan from using the current factors if the assumptions are incorrect. For example, if all of our assumptions are correct and a Union Thrift participant is age 45 at purchase, it costs the plan roughly .622%-.492% of their pay for each month purchased (4.68% of their current pay if they purchased 3 years).

Mr. Timothy Peifer  
Page 3  
September 14, 2004

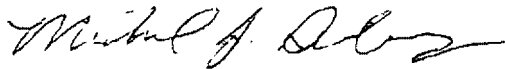
### Conclusions

Your current purchase factors appear reasonable for an age 35 year old based on the assumptions shown above. We can adjust these if you feel it might be more appropriate to use other assumptions. It might also be appropriate to base the factor on age at purchase.

If you wish to change the factors, I assume it would be for future purchases only. We should discuss an appropriate way to transition to new factors. It may be desirable to give participants one last chance to buy service using the old purchase cost.

Please give me a call after you have had a chance to review this information. I look forward to discussing it with you.

Sincerely



Michael Dulaney, FSA, EA, MAAA  
Consulting Actuary  
Principal Financial Group  
800-543-4015, ext. 55789  
Dulaney.Mike@Principal.com

Enclosure

cc Donna Boker, City of Rockville  
Alison Putnam, Principal Financial Group  
Pam Quinlan, Principal Financial Group  
Jill Burch, Principal Financial Group



Exhibit I

City of Rockville - Cost of Additional one month of Service  
(as a Percentage of Earnings at Purchase)

Age at Purchase	Union Thrift Option (1% of Average Earnings)*					
	Current Factors**	Higher Salary Increases	Higher Investment Return	Lower Assumed Ret. Age	Lower Life Expectancy	
30	0.437%	0.770%	0.216%	0.449%	0.411%	
35	0.492%	0.788%	0.266%	0.505%	0.462%	
40	0.553%	0.807%	0.329%	0.569%	0.520%	
45	0.622%	0.826%	0.405%	0.640%	0.585%	
50	0.700%	0.845%	0.500%	0.719%	0.658%	
55	0.788%	0.865%	0.617%	0.809%	0.740%	
<b>Assumptions:</b>						
Age at Retirement:	60	60	60	55***	60	
Annual Salary Increases:	5.00%	7.00%	5.00%	5.00%	5.00%	
Investment Return:	7.50%	7.50%	9.50%	7.50%	7.50%	
Mortality Table:	1994 GAR	1994 GAR	1994 GAR	1994 GAR	1983 GAM Male	
(Life Expectancy for 60 year old)	(23.5 Years)	(23.5 Years)	(23.5 Years)	(23.5 Years)	(20.6 Years)	

\*Other formulas would be a factor of this 1% table. Police would be 2.25 times, Union DB would be 1.8 times, etc.

\*\*Based on recalculated values. Could not exactly match current factors.

\*\*\* Assumed 15% reduction for early retirement (reductions for police could be more or less)





# MAYOR AND COUNCIL AGENDA

NO. 7(F)

DEPT.: Information and Technology

DATE: December 30, 2004

**ACTION:** Approval of Contract A63307

**TO:** Dell Marketing LP

**OF:** Austin, Texas

**Amount:** Not to exceed \$180,000

**FOR:** Computers, servers, computer parts and peripherals

**ACTION STATUS:**

**FOR THE MEETING OF:** 01/10/05

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

**ROCKVILLE CITY CODE,**

CHAPTER

SECTION

☒ **CONSENT AGENDA**

**RECOMMENDATION:** Staff recommends Mayor and Council approval to purchase up to \$180,000 of computer equipment, peripherals, and servers for the period January 1, 2005 through June 30, 2005 from Dell Marketing LP of Austin, Texas with option of extending the contract terms and conditions for four additional one-year periods with approval of City Manager and subject to appropriation of funds.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

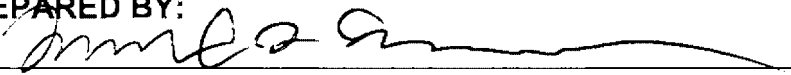
Sufficient funds are budgeted in account 110-750-0100-0438

**BACKGROUND:** The City's standardizes on Dell equipment for purchases of laptops, PCs, and servers. Dell equipment has proven to be highly reliable and served the City well. Dell also has an outstanding service organization and will come on site to make repairs and cover warranty related problems for up to 36 months. Efficiently running PCs, laptops and servers is a vital part of the City's technology infrastructure. These purchases will be used to replace outdated hardware as part of the department's routing replacement cycle, which is currently a minimum of three years.

In the past the City has taken advantage of purchasing computer equipment by volume bidding in conjunction with a lead jurisdiction through the National Association of Statement Procurement Officials (NASPO) and members of the Western States Contracting Alliance (WSCA). On August 2, 2004, the Mayor and Council approved the purchase of Dell equipment off of the Western States Contracting Alliance (WSCA) contract which expired on December 31, 2004 in the amount of \$150,000. As of 12/31/04, approximately \$12,000 has been actually spent on Dell equipment. Due to the City Hall renovation project and two pending moves of the IT department, most planned computer purchases were delayed until the second-half of the year.

This new contract will expire on August 31, 2007 but may be mutually renewed for two (2) additional one-year terms. Purchasing off this contract, bid through the State of Minnesota, saves the City considerable time and assures bulk volume discounts.

**PREPARED BY:**

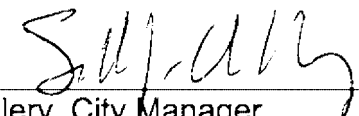
  
Michael Q. Cannon, Director Information and Technology

**CONCUR:**

  
Eileen Morris, Contract Officer

12/04/05  
Date

**APPROVE:**

  
Scott Ullery, City Manager

01/05/05  
Date

**LIST OF ATTACHMENTS:** None



# MAYOR AND COUNCIL AGENDA

NO. 7(6) DEPT.: / Community Planning and Development Services DATE: Dec. 10, 2004  
Contact: Roger Rodin, Project Manager for Town Center

**ACTION:** Approval of a professional services agreement.

**To:** Engineering Consulting Services, Ltd.

**Of:** Columbia, Maryland

**Amount:** Not To Exceed: \$424,352 (\$304,352 for actual work plus NTE \$50,000 for reimbursable expenses and NTE \$70,000 for overtime costs, if required).

**For:** Rockville Town Square materials observation, testing, and inspection services during site-work and the construction of Blocks 2, 4 and 5 Public Garages.

## ACTION STATUS:

**FOR THE MEETING OF:** 1/10/05

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

**ROCKVILLE CITY CODE,**

CHAPTER

SECTION

☒ **CONSENT AGENDA**

**RECOMMENDATION:** FRIT Project Manager and the City of Rockville representative recommends the award of this Contract to ECS, Ltd. in the amount "not to exceed" \$424,352 to provide materials testing, observation, and inspection services for Rockville Town Square during site-work and construction of Blocks 2, 4 and 5 Public Garages. The performance of these services provides the foundation of the Project Quality Assurance and Quality Control Program.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding: Sufficient funding is available in the Account No. 420-600-0A80-0426.

**BACKGROUND:** On November 7, 2003 the Mayor and City Council approved the performance of professional services, by ECS, Ltd., related to the pre-construction phase of the Rockville Town Square Project in the amount of \$15,952.50 for geo-technical and testing services related to Block 4 sub-surface investigation and geotechnical engineering.

On August 2, 2004 Mayor and City Council approved a time and materials contract in the amount not to exceed \$50,000 for initial geotechnical inspections and materials testing related to the Rockville Town Square Project.

Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

Therefore, approval of this agenda item will also include a finding by the Mayor and Council that the public/private nature of the Town Square project, the City's contractual obligations to comply with the terms of the amended and restated GDA (approved June 2004), the October 2003 MOU between the City and County and the mixed use buildings create unique and/or unusual circumstances. These factors justify the special procurement procedure and will also contribute to the Rockville Town Square project being completed on time.

**PREPARED BY:**

*Roger Rodin*

Roger Rodin, Project Manager for Rockville Town Square

1-4-2005

Date

**APPROVE:**

*Arthur D. Chambers*  
Arthur D. Chambers, AICP, Director, CPDS

1-4-05

Date

**APPROVE:**

*Eileen Morris*  
Eileen Morris, Contract Officer

1/4/05

Date

**APPROVE:**

*Scott Ullery*  
Scott Ullery, City Manager

01/05/05

Date

**LIST OF ATTACHMENTS:**

1. ECS Proposal No. 13:211R-CP



**ENGINEERING CONSULTING SERVICES, LTD.**  
Geotechnical • Construction Materials • Environmental

ATTACHMENT I

September 7, 2004

Mr. Brian Spencer  
Development Management Group  
5017 Durham Road East  
Columbia, Maryland, 21044

ECS Proposal No. 13:2115R-CP

Reference: Proposal for Construction Materials Observation and Testing Services,  
Rockville Town Square Sitework and Blocks 2, 4, and 5 Garages, Rockville,  
Maryland.

Dear Mr. Briggs:

As requested, Engineering Consulting Services, Ltd. (ECS, Ltd.) is pleased to present our proposal for providing materials observation and testing services during sitework and the construction of the Blocks 2, 4, 5 Garages for the Rockville Town Square Project in Rockville, Maryland. In preparing this proposal, we had the opportunity to review the plans and a construction schedule but did not receive the project specifications.

### **PROJECT OVERVIEW AND SCOPE OF SERVICE**

We understand that this portion of the project will consist of all sitework for the public portions of Rockville Town Square and garages within Blocks 2, 4, 5. Sitework is to consist of mass grading, the construction of storm water management systems, retaining walls, sidewalks, paving, and utility backfilling operations. Structural elements will include foundations, masonry, and pre-cast steel. The following is the Scope of Services we will provide for this portion of the project:

#### **A. Earthwork/Foundations:**

1. Perform appropriate laboratory testing on materials proposed for use as fill, backfill, and paving subgrade in accordance with project specifications. Testing may include:
  - a. Grain Size Distribution, ASTM D-422
  - b. Liquid and Plastic (Atterberg) Limits, D-4318
  - c. Proctor Moisture Density Relationships ASTM D-698
  - d. pH Content
  - e. Organic Content
2. Observe placement of fill and backfill to verify compliance with project requirements. Perform in-place density tests as required by project

5112 Pegasus Court, Suite S, Frederick, MD 21704 • (301) 668-4303 • FAX (301) 668-3519 • [www.ecslimited.com](http://www.ecslimited.com)

Aberdeen, MD • Atlanta, GA • Austin, TX • Baltimore, MD • Buford, GA • Chantilly, VA • Charlotte, NC • Chicago, IL • Dallas, TX  
Danville, VA • Frederick, MD • Fredericksburg, VA • Greensboro, NC • Greenville, SC • Norfolk, VA • Orlando, FL • Raleigh, NC  
Richmond, VA • Roanoke, VA • San Antonio, TX • Williamsburg, VA • Wilmington, NC • Winchester, VA • York, PA

\*Testing Services Only

①

Rockville Town Square Silework and 2, 4, and 5 Garages  
ECS Proposal No. 13-2115-CP  
July 28, 2004  
Page 2

specifications, and verify that each lift is properly placed and compacted prior to placement of additional fill.

3. Observe conditions of bottom of excavations prior to foundation preparation, including proofrolling and other testing of subgrades; note seepage of water, and suggest and observe corrective measures at problem areas.
4. Verify that bearing capacity of soils at footing subgrades meets or exceeds design parameters through correlation of soil boring data, use of the Dynamic Cone Penetrometer, and reference to approved drawings.
5. Verify that dimensions of foundation elements comply with design specifications and approved drawings.
6. Provide representation at progress meetings as required by the project team.
7. Provide documentation of daily events in the field and notify the appropriate persons upon recognition of deficiencies.

**B. Cast-in-Place Concrete:**

1. Verify compliance with the provisions of ACI 318, 301, 214, 304, 305 and 306, local building codes, generally accepted construction practices, and specific project requirements.
2. Observe placement of reinforcing steel to verify proper size, grade, spacing, cleanliness, length, location and type of splices, and general compliance with project plans and specifications; verify proper cover of reinforcing steel during concrete placement.
3. Monitor placement of concrete and verify proper procedures with regard to forming, vibration, and curing in accordance with appropriate ACI documents, project plans and specifications.
4. Provide a supply of standard cylinder molds at the site.
5. Sample concrete at the frequency stated in the project specifications and perform the following tests and functions:
  - a. Verify mix design
  - b. Slump
  - c. Air Content
  - d. Temperature
  - e. Batch-to-placement time
  - f. Cast test cylinders

Sampling, testing, and curing of specimens in the field shall be performed in accordance with applicable ASTM guidelines and project requirements. Compliance with extreme weather procedures will also be verified.

Rockville Town Square Sitework and  
ECS Proposal No. 13-2115-CP  
July 28, 2004  
Page 3

6. Confirm that the contractor has provided proper storage and curing facilities for the first 24 hours after casting of cylinders.
7. Cure and test concrete cylinders in the laboratory as directed by the project specifications and in accordance with ASTM C-31 and C-39.
8. Provide detailed documentation of daily events in the field and notify the appropriate persons upon recognition of deficiencies.

**C. Retaining Wall Construction:**

1. Periodically monitor footing excavation operations to document removal of unsuitable materials including trash, debris, frozen soil, problem clays or stones with a maximum dimension greater than 6 inches.
2. Observe conditions of bottom of footing excavation prior to foundation preparation, including testing of subgrades; note seepage of water, and suggest and observe corrective measures at problem areas.
3. Observe placement of backfill behind retaining wall to document compliance with project requirements. Perform in-place density tests as required by project specifications, and document that each lift is properly placed and compacted prior to placement of additional fill.
4. Document that bearing capacity of soils at footing subgrades meets or exceeds design parameters through correlation of soil boring data, use of the Dynamic Cone Penetrometer, and reference to approved drawings.
5. Where deficiencies are noted during backfill placement, suggest and observe remedial actions, including reworking and recompacting of materials.
6. Document placement of drainage materials, including weepholes, are in accordance with project specifications and drawings.
7. Provide documentation of daily events in the field and notify the appropriate persons immediately upon recognition of deficiencies.

**D. Masonry:**

1. Periodically observe procedures and materials to verify compliance with ACI 530.1, Contract Documents and sound construction practices.
2. Obtain grout prisms as required in the specifications, and test grout for compressive strength as specified in ASTM C 1019.
3. Obtain mortar cubes as required in the specifications, and test mortar for compressive strength as specified in ASTM C 780.
4. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

Rockville Town Square Sitework and 2, 4, and 5 Garages  
ECS Proposal No. 13-2115-CP  
July 28, 2004  
Page 4

**E. Paving:**

1. Observe proofrolling of sub grades, and suggest and observe corrective action at excessively soft areas prior to placement of subbase course.
2. Observe placement of subbase course and perform appropriate in-place density tests as directed by specifications.
3. Verify proper thickness of subbase course materials.
4. Observe placement and rolling operations and temperature of paving mixture at time of placement.
5. Perform appropriate measures and tests to verify adequate asphalt thickness and density during placement.
6. Provide documentation of daily events in the field and notify the appropriate persons upon recognition of deficiencies.

**F. Precast Connections:**

1. Examination of erection and fit-up of members to verify compliance with contract documents and shop drawings.
2. Visual examination of welded and bolted connections.
3. Perform periodic inspections of the precast fabrication plant in accordance with project specifications; verify proper procedures and materials and existence of adequate in-house quality assurance programs in accordance with PCI criteria.
4. Provide detailed documentation of daily events in the field and notify the appropriate persons upon recognition of deficiencies.

**G. Additional Services:**

In addition to these types of standard services, ECS has the in-house capability to provide additional services such as retesting, remedial recommendations, or special testing. Examples of special testing include acquisition and testing of concrete core samples, determination of slab levelness (F Values), location of reinforcing steel in hardened concrete, Windsor Probe testing, structural load tests, monitoring of earth retention system performance, and roofing inspections. Such services may require additional mobilization of specialized equipment and/or personnel, and are not considered part of our basic scope or cost estimate.



Rockville Town Square Sitework and 2, 4, and 5 Garages  
 ECS Proposal No. 13-2115-CP  
 July 28, 2004  
 Page 5

### PROJECT UNIT RATES

The following are the units costs associated with services proposed for this project:

	Description	Billing Code	Rate
1.	Lead Engineering Technician for on-site coordination of ECS quality control efforts, portal-to-portal	1800	\$ 30.00/hour
2.	Fireproofing Technician for on-site observation and testing of applied fireproofing materials	8055	\$35.00/hour
3.	Project Engineer, for routine project supervision and technical support	1300	\$ 70.00/hour
4.	Principal Engineer, for special consultant in unusual circumstances, and general project management	1100	\$110.00/hour
5.	Structural Steel Technician, for visual weld inspection, bolt torque connections and column plumbness, metal deck observation, testing of shear studs, and for ultrasonic and other non-destructive testing on welded connections.	7002	\$60.00/hour
6.	Technical Typist, as needed for report preparation	1950	\$ 28.00/hour
7.	Compressive strength testing: a. Concrete cylinders (ASTM C31) b. Grout Prisms c. Mortar Cubes	6000 6020 6030	\$ 8.50/each \$ 15.00/each \$ 10.00/each
8.	Proctor Moisture Density Relationships (ASTM D-698), Standard Proctor Method	5004	\$110.00/test
9.	Atterberg Limits Tests (ASTM D-4318), for determination of plasticity characteristics of fine-grained soils	4300	\$ 55.00/test
10.	Grain Size Analysis (ASTM D-422), for determination of grain size distribution of granular soils	4400	\$ 55.00/test
11.	pH Content	4701	\$ 40.00/test
12.	Organic Content	4700	\$40.00/each
13.	Nuclear Density Gauge Fee	5000	\$ 15.00/day
14.	Mileage	3350	\$ 0.40/mile
15.	Cylinder Pick-Up	1807	\$ 25.00/each

(5)

Rockville Town Square Sitework and is 2, 4, and 5 Garages  
ECS Proposal No 13-2115-CP  
July 28, 2004  
Page 6

**Please Note:** There will be no "show-up" or minimum charge of any kind for services rendered on this project. Billing will be based on specific units reflecting only the actual time spent and tests performed on behalf of this project.

The services described above would be rendered portal-to-portal from our office in Frederick, Maryland. Our unit rates are based on an 8-hour workday, Monday through Friday. Overtime in excess of 8 hours per day, and any work performed on Saturdays, Sundays or Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above. Since our services are largely provided on an on-call basis, ECS cannot accept responsibility for failing to observe and test specific materials or areas if 24 hours advance notification and safe access is not provided. Emergency services or services required the same day of notice will be billed at one and one half times the unit rate. The services provided by ECS in no way relieve the contractor of his responsibility to perform his work in accordance with the approved plans and specifications.

Based on the unit rates provided and time schedule discussed with you on July 15, 2004, the not to exceed cost for our services as noted is \$304,302.00. A breakdown of the costs is included as Enclosure (1). Based upon discussions with Ted Border, Whiting Turner Project Manager, there will be additional costs associated with overtime both for the sitework and garages. The allowance for these additional costs will be \$48,937.50 for the sitework and \$21,262.50 for the garages. The total allowance for overtime for this project will be \$70,200.00.

It is our belief that all required services have been included in our unit price list. We also provide a number of services not specifically outlined in this list. Should additional services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. All unit prices listed herein shall remain as stated throughout the project or one year from notice to proceed.

### **REPORTING, BILLING, AND CONTRACT CONDITIONS**

You will be issued daily field reports and laboratory test reports as part of our service. Because our reporting systems are fully computerized, we are generally able to submit laboratory results and field reports within 48 hours of testing. These reports can be emailed upon request. If deficiencies in procedures or materials are recognized in the field, the general contractor will be verbally notified as soon as possible so that the problem may be resolved prior to the performance of additional work. Deficient laboratory results are reported by telephone to the client, structural engineer, and general contractor by the Project Engineer. Copies of reports will be forwarded to each party designated by the client, at no extra charge, as part of our service.

Invoices will be issued on a monthly basis and will provide a week-by-week breakdown of billing units, unless modified by request of the client. They are normally processed on or around the 10th of each month and represent costs incurred during the previous month. These invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress, and it will serve as notification to the client of potential budget estimate overruns. Should actual billings exceed

Rockville Town Square Sitework and Tr 2, 4, and 5 Garages  
ECS Proposal No. 13-2115-CP  
July 28, 2004  
Page 7

the original budget estimate, we can provide a detailed written explanation of the cause of the overrun if so requested. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days.

### SUMMARY AND ACCEPTANCE

In summary, we have provided for a comprehensive monitoring and testing program based on our understanding of the scope of service required. This program is designed to satisfy City of Rockville guidelines, specific project requirements, and sound construction practices. In developing our estimate, we have proposed to provide a highly qualified consulting team while balancing the importance of quality assurance and economy to the client. Our project team has implemented this type of program with great success on many projects of similar magnitude and type of construction, and we feel we are uniquely qualified to perform as such on this project.

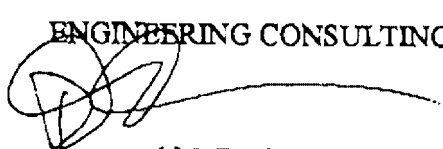
Attached to this letter, and an integral part of our proposal, are our "General Conditions of Service". These conditions represent the current recommendations of the Association of Soil and Foundation Engineers, the Consulting Engineers' Council, and the Geotechnical Division of the American Society of Civil Engineers.

This document is the agreement for our services. Your acceptance of this proposal may be indicated by signing below and returning the enclosed copy to us.

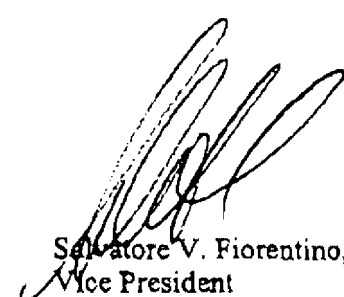
We appreciate the opportunity to offer our services, and we look forward to working with you on the project.

Respectfully,

ENGINEERING CONSULTING SERVICES, LTD.



Raymond M. Bradner  
Project Engineer



Salvatore V. Fiorentino, P.E.  
Vice President

Enclosure: Estimated Total Cost  
Proposal Acceptance  
General Conditions

I:\FIELD\SYN\PROPOSAL\2004\12100\13-2115 Rockville Town Center Site & Block 4 Garage.doc

**Engineering Consulting Services, Ltd.****PROPOSAL ACCEPTANCE**

Proposal No.: 13:2115-CP  
Scope of Work: Construction Materials Observation and Testing  
Services  
Project Name: Rockville Town Square Sitework and Blocks 2,4, & 5  
Garages  
Project Location: Rockville, Maryland

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please complete and return this page to ECS, Ltd. To indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client's signature above also indicates that he/she has read or has had the opportunity to read the accompanying General Conditions of Service and agrees to be bound by such General Conditions of Service.

**BILLING INFORMATION**

(Please Print or Type)

Name of Client: \_\_\_\_\_  
Name of Contact Person: \_\_\_\_\_  
Telephone No. Of Contact Person: \_\_\_\_\_  
Party Responsible for Payment: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Person/Title: \_\_\_\_\_  
Department: \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Client Project/Account Number: \_\_\_\_\_  
Special Conditions for Invoice: \_\_\_\_\_  
Submittal and Approval: \_\_\_\_\_

\*Please submit a distribution list with proposal acceptance for field reports.

8

**Estimated Cost**  
**Rockville Town Square Sitework and Blocks 2, 4, and 5 Garages**  
**Rockville, Maryland**

**FIELD SERVICES**

ECS Proposal Number 13:2115R-CP

	HOURS/DAY	DAYS/WEEK	WEEKS	RATE	TOTAL
Sitework Technician	8	5	102	\$30.00	\$122,400.00
Sitework Technician Overtime	1	5	87	\$45.00	\$19,575.00
Garage Technician	8	5	27	\$30.00	\$32,400.00
Waterproofing Technician	4	1	38	\$35.00	\$5,320.00
Structural Steel Inspector	6	1	38	\$60.00	\$13,680.00

SUBTOTAL: \$193,375.00

**ENGINEERING & SUPPORT**

	HOURS/DAY	DAYS/WEEK	WEEKS	RATE	TOTAL
Project Engineer	0.35	5	102	\$70.00	\$12,495.00
Project Engineer On Site	2.5	1	51	\$70.00	\$8,925.00
Principal Engineer	0.2	5	102	\$110.00	\$11,220.00
Secretary	0.4	5	102	\$28.00	\$5,712.00

SUBTOTAL: \$38,352.00

**LABORATORY TESTING AND FEES**

	UNITS	RATE	TOTAL
Proctor Tests	8	\$110.00	\$880.00
Atterberg Limits	8	\$55.00	\$440.00
Sieve Analysis	8	\$55.00	\$440.00
Organic Content	4	\$40.00	\$160.00
pH Content	4	\$40.00	\$160.00
Cylinder Pick-up	284	\$25.00	\$7,100.00
Nuclear Density Gauge Fee	592	\$15.00	\$8,880.00
Mileage	43000	\$0.40	\$17,200.00

SUBTOTAL: \$35,260.00

**CONCRETE TESTING**

	CYLS/DAY	DAYS/WEEK	WEEKS	RATE	TOTAL
Sitework	10	5	20	\$8.50	\$8,500.00
Block 2 Garage	25	5	10	\$8.50	\$10,625.00
Block 4 Garage	12	5	10	\$8.50	\$5,100.00
Block 5 Garage	24	5	12	\$8.50	\$12,240.00
Mortar Cubes	3	1	12	\$10.00	\$360.00
Grout Prisms	3	1	12	\$15.00	\$540.00

SUBTOTAL: \$37,365.00

SITEWORK TOTAL: \$215,060.00

GARAGES TOTAL: \$89,292.00

TOTAL: \$304,352.00

## ENGINEERING CONSULTING SERVICES, LTD. GENERAL CONDITIONS OF SERVICE

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services to be provided in the Proposal, are incorporated by reference into the foregoing Proposal and shall be part of the Agreement under which services are to be performed by ECS for Client. For the purposes of these General Conditions, "Agreement" shall mean the Proposal, these General Conditions, Supplemental Conditions (if any) and Fee Schedule.

### SECTION 1: SCOPE OF WORK

- a. The scope of work shall include all services provided by ECS, in its discretion, which are reasonably necessary and appropriate for the efficient and prompt fulfillment of ECS's obligations under the Agreement, including these General Conditions and any supplemental conditions incorporated herein, it being expressly provided that all such services provided shall be invoiced and paid for in accordance with Section 3 below.
- b. It is understood that the scope of work and time schedule defined in the Proposal are based on the information provided by Client. If this information is incomplete or inaccurate, or if unexpected conditions are discovered, the scope of work may change, even as the work is in progress. If the Client requests additional services or when a change in the scope of work or time schedule is necessary, a written amendment to the Agreement shall be executed by the Client and ECS as soon as is practicable and consent to such amendments shall not be unreasonably withheld.

### SECTION 2: CLIENT DISCLOSURES

- a. The Client shall notify ECS of any known or suspected hazardous substances, which are or may be related to the services to be provided. Such hazardous substances shall include but not be limited to any substance which poses or may pose a present or potential hazard to human health or the environment, whether contained in a product, material, by-product, waste or sample and whether it exists in a solid, liquid, semi-solid or gaseous form. The duty to notify ECS of any such hazardous substances shall also apply to any of the foregoing substances which ECS may be provided or obtain or which exist or may exist on or near any premises upon which services are to be performed by employees, agents or contractors of ECS. The Client shall notify ECS of all such hazardous substances of which it has knowledge or which it reasonably suspects exist upon entering into this Agreement. Thereafter, disclosure and notification to ECS shall be required immediately upon discovery of any other hazardous substances or upon discovery of increased concentrations of previously disclosed substances where the increased concentration makes them hazardous.
- b. Following any disclosure as set forth in the preceding paragraph, or if any hazardous substances are discovered or reasonably suspected by ECS after its services are undertaken, ECS may, at its discretion, discontinue its services. Whether or not ECS discontinues its services in whole or in part, the Client and ECS agree that the scope of services, schedule and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, and ECS may, at its discretion, terminate the Agreement. In the event that the Agreement is terminated pursuant to this Section, the Client shall pay ECS for services and all termination expenses as set forth in Section 11 of this Agreement.
- c. If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where dust, fumes, gas, noise, vibrations or other particulate or non-particulate matter is in the atmosphere which may pose a potential health hazard or nuisance to those working in the area of such conditions, Client shall notify ECS of such condition, potential health hazard or nuisance and thereafter ECS shall take all necessary and reasonable measures to protect its employees against such possible health hazards or nuisances. The reasonable direct cost of such measures shall be born by the Client.

### SECTION 3: BILLINGS AND PAYMENTS

- a. Unless otherwise specifically provided in the Proposal or Agreement, billings will be based on actual time used at the standard rates shown on the attached fee schedule, travel cost and other expenses. Such billings shall not be limited by the estimates of total, incremental or phase project costs provided for information purposes in the Proposal. Client recognizes that time is of the essence with respect to payment of ECS's invoices, and that timely payment is a material part of the consideration of this Agreement. Client shall pay ECS for services performed in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth herein. Invoices will be submitted by ECS from time to time, but no more frequently than every two weeks, and shall be due and payable upon receipt. If Client objects to all or any portion of an invoice, Client shall nevertheless timely pay the full amount of such invoice and Client shall notify ECS within fourteen (14) calendar days of the invoice date of the cause of disagreement and the portion of the invoice in dispute. Thereafter, ECS and the Client shall make good faith effort to resolve such dispute.
- b. Client shall pay an additional charge of one-and-one-half (1.5) percent (of the maximum percentage allowed by law, whichever is lower) of the invoice amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excluding any portion of the invoice amount in dispute and received in favor of Client. Payment thereafter shall still be applied to accrued interest and then to the principal unpaid amount. Payment of invoices is in no case subject to imputed discounting or set-offs by Client.
- c. Application of the percentage rate indicated above as a consequence of Client's late payments does not constitute any willingness on ECS's part to finance Client's operation, and no such willingness should be inferred. If Client fails to pay invoice amounts within thirty (30) calendar days of the date of the invoice, ECS may at any time, without waiving any other claim against Client and without thereby incurring any liability to Client, suspend or terminate this Agreement. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination.
- d. The Client's obligation to pay for the services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, final adjudication of a lawsuit in which ECS is not involved, or upon Client's successful completion of the project. No deduction shall be made from any invoice on account of penalty, liquidated damages or other sums withheld from payments to ECS. It is agreed that all expenses incurred by ECS in enforcing the Agreement or in obtaining liens, obtaining judgments or collecting any delinquent amounts due, including reasonable attorneys' fees which are recoverable from the Client.
- e. The fees quoted in this contract shall remain valid for a period of twelve (12) months from the date of contract. Thereafter, they shall be adjusted in accordance with the Average Consumer Price Index (CPI) for the next twelve (12) months.

### SECTION 4: RIGHT OF ENTRY

- a. Client hereby grants ECS and its subcontractors or agents the right to enter from time to time property owned by Client and/or others in order for ECS to fulfill the scope of services included hereunder. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this Agreement. Client also understands that the discovery of certain hazardous conditions and/or taking preventive measures relative to these conditions may result in a reduction of the Property's value. Accordingly, Client waives any claim against ECS and its subcontractors or agents, and agrees in defense, indemnify and hold ECS harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials. In addition, Client agrees to compensate ECS for any time spent or expenses incurred by ECS in defense of any such claim with compensation to be based upon ECS's prevailing fee schedule and expense reimbursement policy.
- b. ECS shall not be liable for damage or injury from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS's attention in writing and correctly shown on the diagram(s) furnished by Client to ECS.

### SECTION 5: SAMPLES

- a. Soil, rock, water and/or other samples obtained from the Project site are the property of Client. ECS shall preserve such samples for no longer than sixty (60) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed.

upon in writing. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to enter and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from ECS's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.

- b. Due to the risks to which ECS is exposed, Client agrees to waive any claim against ECS, and to defend, indemnify and hold ECS harmless from any claim or liability for injury or loss arising from containing, labeling, transporting, testing, storing, or other handling of contaminated samples. Client also agrees to compensate ECS for any time spent and expenses incurred by ECS in defense of any such claim, with such compensation to be based upon ECS's prevailing fee schedule and expense reimbursement policy.

### SECTION 6: REPORTS AND OWNERSHIP OF DOCUMENTS

- a. ECS shall furnish three (3) copies of each report to Client. Additional copies shall be furnished at the rates specified in the fee schedule. With the exception of ECS Reports to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations and estimates are and remain the property of ECS. Client agrees that all reports and other work furnished to the Client not paid for in full will be returned to ECS upon demand and will not be used for design, construction, permit or licensing.

### SECTION 7: STANDARD OF CARE

- a. Services performed by ECS under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Engineering profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in the Agreement, or in any report, opinion, document or otherwise.
- b. Any exploration, testing, surveys and analysis associated with this work will be performed by ECS for the Client's sole use to fulfill the purpose of this Agreement and ECS is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by ECS are based solely on the information available from such borings, surveys and explorations.

### SECTION 8: LIMITATION OF PROFESSIONAL LIABILITY

- a. Client agrees to limit ECS's liability to Client and all construction contractors arising from ECS's professional acts, errors or omissions in performing this Agreement, such that the total aggregate liability of ECS to all of those named shall not exceed \$50,000 or total fee for the services rendered on this project, whichever is greater. Client further agrees to require of the Client's General Contractor and its subcontractors an identical limitation of ECS's liability for damages that may be suffered by the contractor or the subcontractors arising from professional acts, errors or omissions of ECS.
- b. Documents, including but not limited to, technical reports, original boring logs, field data, field notes, laboratory test data, calculations, and estimates furnished to the Client or its agents pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse without ECS's written consent will be at Client's sole risk and without liability to ECS or to ECS's contractors and Client shall indemnify and hold harmless ECS and ECS's contractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
- c. Under no circumstances shall ECS be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or maintenance or service providers to install work in accordance with the plans and specifications.

### SECTION 9: LIABILITY INSURANCE

- a. ECS represents that it and its agents and consultants employed by it, is and are protected by Workers Compensation insurance and that ECS has coverage under liability insurance policies which ECS deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. ECS shall not be responsible for bodily injury and property damage or losses arising directly or indirectly, in whole or in part, from acts by the Client, its employees, agents, staff, consultants or subcontractors employed by it or by any other person or combination of persons. The Client agrees to limit the liability of ECS to the limit of ECS's insurance. The Client is responsible for retaining specific instructions or limits of coverage that are not present in ECS insurance, the cost of such inclusions or coverage increases, if available, to be at the expense of the Client.

### SECTION 10: ARBITRATION OF DISPUTES

- a. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be decided through arbitration, as adopted and described by the then most current rules of the American Arbitration Association. The parties further agree that Client will require, as a condition for participation in the project and their Agreement to perform labor or services, that all Contractors, Subcontractors, Subsubcontractors and Materialmen, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties, shall agree to this procedure.

### SECTION 11: TERMINATION

- a. Client or ECS may terminate this Agreement for breach of this Agreement, or for any other reasons which may arise. In the event of termination, the party effecting termination shall so notify the other party, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause therefore, ECS shall promptly render to Client a final invoice and Client shall immediately reimburse ECS for services rendered and costs incurred, in accordance with ECS's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, such as demobilizing, modifying schedules and reassigning personnel. Upon such termination, Client and ECS shall deliver to each other all reports and documents pertaining to services performed up to termination.

### SECTION 12: SEVERABILITY

- a. Any provision of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

### SECTION 13: TITLES

- a. The titles used in this Agreement are for general reference only and are not part of the Agreement. Parties to this Agreement are advised it is made each provision and rely on the substance of legal counsel as necessary to help ensure a complete understanding of all provisions and the obligations imposed through acceptance.

### SECTION 14: SURVIVAL

- a. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and ECS shall survive the completion of services and the termination of this Agreement.

### SECTION 15: ASSIGNMENT

- a. Neither the Client nor ECS may delegate, assign, sublet or transfer its duties, responsibilities or interests in this Agreement without the written consent of the other party.

### SECTION 16: CHOICE OF LAW

- a. This Agreement shall be interpreted according to the laws of the State in which the Project is located (but not including the choice of law rule).

END OF GENERAL CONDITIONS

10

**EXHIBIT B**  
[Form of Change Order]

**CHANGE ORDER**  
(Professional Services)

PROJECT NAME: ROCKVILLE TOWN CENTER  
OWNER: THE MAYOR AND COUCL OF ROCKVILLE  
PROFESSIONAL: ENGINEERING CONSULTING SERVICES, INC.  
DATE OF ORIGINAL PROFESSIONAL SERVICES AGREEMENT: AUGUST 3, 2004  
DATE OF CHANGE ORDER:  
CHANGE ORDER NUMBER:

1. The Services provided by Professional under the Professional Services Agreement are changed as follows *(include a specific and detailed description of the change in the scope of the services, attaching relevant documents as appropriate)*:
2. The original schedule or completion date for the Services has been changed as follows:
3. Professional's fee is hereby [increased] [decreased] by \$\_\_\_\_\_ *(applies only if Professional is performing the Services for a fixed fee)*. Professional's adjusted total fee, including this Change Order, is \$\_\_\_\_\_.
4. Professional hereby waives and releases any other claim it may have against Owner for additional compensation, damages or additional time to perform the Services, resulting from, or related to, the change reflected in this Change Order, except as agreed to above.

OWNER:  
THE MAYOR AND COUNCIL OF  
ROCKVILLE

PROFESSIONAL:  
ENGINEERING CONSULTING  
SERVICES, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:



**EXHIBIT C****[Insurance Requirements]**

Professional shall obtain, pay for and keep in force at all times during the performance of the Services, and afterwards, as may be required in this Exhibit, the following insurance coverages placed with insurance companies having an A.M. Best rating of A VI or better:

- a) Workers' Compensation Insurance in amounts required by statute in the state in which the Project is located.
- b) Employer's Liability Insurance with limits of liability of not less than:  
\$500,000 each accident  
\$500,000 disease policy limit  
\$500,000 disease – each employee
- c) Automobile Liability Insurance, including owned, hired, and non-owned coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
- d) Commercial General Liability Insurance (including Products and Completed Operations, Personal and Advertising Injury and Blanket Contractual coverages) with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. Owner and its lender (if any) and Project Manager (if any), as well as any other individual or entity (together with its agents and employees) having legal or equitable interest in the Project, shall be added as an additional insured. The policy shall provide such additional insured with a thirty (30) day written notice of cancellation, non-renewal or material change. Any certificates of insurance furnished in accordance with this Agreement shall specify who has been added as additional insured and shall state that the policy has been amended to provide the thirty (30) day advance written notice.

- e) If this Agreement requires the performance of any professional services including, but not limited to, architectural or engineering services of any kind, then Professional shall procure and maintain, for a period of three (3) years after final payment under this Agreement, Professional Liability Insurance with a limit not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) general aggregate.

All insurance policies provided pursuant to the foregoing provisions of this section shall be in a form satisfactory to the Owner, and Professional shall furnish such policies to Owner upon request. Professional may meet the limits of liability indicated by means of the use of an umbrella liability policy. Any general liability policy must be written on an occurrence basis.

Owner shall be furnished with certificates evidencing that all such insurance specified herein is in force prior to commencement of the Work. If Professional fails to furnish and maintain the required insurance, Owner may either terminate this Agreement at once or purchase the required insurance and, in addition to any other remedies which Owner may have at law or in equity, deduct the cost thereof (together with reasonable charges for obtaining said insurance) from any sums due, or to become due, to Professional.

Professional's liability insurance coverage shall be primary as to any coverage available to, or through, the Owner.